

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

DECISION AND ORDER
99-CR-127A
00-CR-44A

T'CHALLO RADFORD,

Defendant.

On August 30, 2000, the defendant, T'Challo Radford, was sentenced to 87 months of imprisonment,¹ to be followed by 5 years of supervised release. The Court also ordered mandatory restitution in the amount of \$174,024. Judgment was entered on August 31, 2000.

The defendant appealed his conviction and sentence to the United States Court of Appeals for the Second Circuit. On February 18, 2004, the Second Circuit affirmed the conviction and sentence, but vacated the Court's order of restitution and remanded for further proceedings on that issue. On December 23, 2004, the Court resentenced the defendant to 87 months of imprisonment and 5 years of supervised release and, pursuant to the Second Circuit's mandate, imposed a new order of restitution. An amended judgment

¹ The defendant was sentenced simultaneously on two indictments. The Court sentenced him to 80 months for Counts 1, 2, 4, 9, 10 and 11 of the first indictment, and 7 months (to be served consecutively) on Count 1 of the second indictment.

was filed on January 21, 2005.

The defendant again appealed to the Second Circuit Court of Appeals. On May 9, 2005, the matter was remanded for this Court for consideration of whether to resentence the defendant pursuant to principles enunciated in United States v. Booker, 125 U.S. 738 (2005), and United States v. Crosby, 397 F.3d 103 (2d Cir. 2005).

The Court appointed attorney Fonda Kubiak, Esq., to represent the defendant and directed the parties to brief the issue of resentencing. On July 8, 2005, the defendant filed a motion for resentencing pursuant to Booker and Crosby, and on July 25, 2005, the government filed a response thereto. Oral argument was held on August 8, 2005.

The Court has reviewed the sentencing memoranda submitted by counsel, as well the original presentence investigation report, the parties' statements with respect to sentencing factors submitted in support of the original sentencing, letters submitted for the Court's consideration, and the transcript of the sentencing hearing on August 30, 2000. Upon such review and after hearing argument from counsel, the Court declines to resentence the defendant. The Court finds that resentencing is not required in this case because the same sentence would have been imposed even if the Guidelines had been merely advisory at that time, and after giving careful consideration to the factors set forth in 18 U.S.C. § 3553(a).

The Court imposed a sentence at the high end of the Guideline

range, which was 70 to 87 months. The Court felt that such a sentence was appropriate given the extent of the defendant's criminal conduct and the nature of the crime that he committed. The defendant was the leader of an extensive and sophisticated fraud scheme. As part of the scheme, the defendant purported to run a community program (the Buffalo Basketball Association) to build leadership and character skills to disadvantaged youth. Instead, the defendant used that organization to perpetrate fraud. His criminal activity occurred over several years and caused an amount of loss of almost \$300,000. The defendant was the most culpable of the seven defendants with whom he was indicted. He was involved in every aspect of the scheme. Furthermore, while on pretrial release, the defendant engaged in the same criminal conduct for which he was indicted, demonstrating a lack of remorse. Because the Court would impose the same sentence even if the Guidelines had been merely advisory, resentencing is not required. Accordingly, the defendant's motion for resentencing is denied.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

Dated: September 8 , 2005